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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Broadcast Signal Carriage)
Issues)

MM Docket No. 92-259

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Reply Comments of
CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc., hereby replies to the Comments of the National Association of Broadcasters ("NAB") and CBS, Inc. who seek benefits under the Commission's broadcast signal carriage rules that are entirely unjustified by the language of the 1992 Cable Act. In Continental's view, such broadcaster efforts to gain special benefits constitute a blatant overreach.

The most cynical of these proposals is the effort by NAB to impose upon cable operators and their subscribers entirely new responsibilities in the area of broadcast signal reception. NAB argues that FCC rules should mandate that cable operators must "employ good engineering practices and take all reasonable steps necessary to extract the highest quality signal available over-the-air from stations within whose ADI it operates."^{1/} NAB

^{1/} NAB Comments at 29.

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then proceeds to detail several specific responsibilities of cable operators, including providing notification, with an engineering affidavit, to any "otherwise must carry eligible station" of the station's failure to comply with the 1992 Act's signal quality delivery specification.^{2/} According to NAB, the cable operator should also be "required to expend reasonable efforts to cooperate with the broadcaster in its efforts to deliver the specified signal level to the headend."^{3/}

NAB'S arguments are unjustified by the very clear language of the 1992 Act. The only responsibilities identified by Congress under Section 614(h)(1)(B), added by Section 4 of the 1992 Act, rest with the broadcaster. It is the broadcaster seeking must-carry status that has the sole responsibility to deliver a good quality signal. No must-carry rights are granted to:

a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.^{4/}

2/ Id. at 30.

3/ Id.

4/ Section 614(h)(1)(B)(iii) (emphasis added).

The statute assigns no responsibility whatsoever, technical or otherwise, to the cable operator in the process of receiving the broadcaster's signal.

Certainly Congress could have made such requirements a part of an Act that details many other responsibilities for cable operators. But it most explicitly did not. If the cable operator, in its discretion, provides signal reception equipment and services that are necessary to receive a sufficient signal over-the-air, this section of the Act, as well as Section 614(b)(10), clearly contemplates that the broadcaster will compensate the cable operator for those incurred costs.

NAB also attempts to graft onto the section of the Act that deals with the delivery of a good quality signal the mandate that cable operators receive every over-the-air signal within the ADI in which the cable system operates. But there is no mention whatsoever of an ADI test in this section of the Act. Section 614(h)(1)(C) refers to stations within the "same television market as the cable system," and, as the FCC's NPRM in this docket points out, that "market" may or may not include an entire ADI.

The NAB also makes an unjustified use of the broadcast signal level delivery requirement in Section 614(b)(1)(B)(iii) as

a justification for not imposing any over-the-air viewability standard as part of a determination of a television station's true local market.^{5/} Section 614(h)(1)(B)(iii), however, refers only to the signal level delivered to a cable system's principal headend, not to the signal level delivered over-the-air to consumers' homes. These two measures are quite different.

In its determination of a relevant market under Section 614(h)(1)(C), the Commission can and should consider over-the-air viewability to homes in particular communities as a meaningful gauge as to whether those communities are legitimately a part of a station's "market." As Continental stated in its initial comments, if a station cannot be received in a community over-the-air today, then it is illogical to include that community as a part of a station's market for must-carry purposes.

While this and other overreaching broadcaster arguments are likely to receive adequate attention in reply comments from industry associations such as the NCTA, Continental would like to bring two additional examples of insupportable broadcaster positions to the Commission's attention. First, the NAB's argument that the FCC's must-carry rules should be adopted and put into effect, and cable operators made to comply with them, before any broadcaster election must be made between

^{5/} NAB Comments at 15.

retransmission consent and must carry,^{6/} is a recipe for cable consumer confusion and discontent. As many have commented, the FCC should establish a must-carry and retransmission consent scheme that minimizes, rather than maximizes, service disruption for cable consumers.

Putting must-carry into effect first, then permitting a different broadcaster option to take effect before October 5, 1993, would create two totally different channel lineup shifts in a very brief time period. This would require costly and disruptive engineering changes such as scrambling and trapping, changes in channel lineup cards, and customer notification, as detailed in Continental's initial comments. While broadcasters would no doubt prefer, from a bargaining perspective, to have the full must-carry regime in operation for some period of time before they make the election to choose retransmission consent, the clear public interest in confronting cable operators and consumers with only one channel line-up switch within a year should not be superseded for their private gain.

Another major overreach is the suggestion by CBS, Inc. that a broadcaster that chooses retransmission consent under amended Section 325 of the Communications Act, added by Section 6 of the 1992 Act, still may enjoy all of the specifics of signal carriage

^{6/} Id. at 43-44.

regulation contained in the FCC's must-carry rules to be adopted under a totally different section of the Act.^{7/} This argument flies directly in the face of the Act's specific dictate of a broadcaster choice between must-carry and retransmission consent.^{8/}

Not satisfied with the success of its lobbying efforts on Capitol Hill, CBS would have the Commission confer benefits on broadcasters that even Congress was unwilling to give. There is absolutely no justification for this CBS position. In fact, the Capital Cities/ABC comments make precisely the opposite argument -- that a broadcaster that chooses retransmission consent loses the statutory benefits of must-carry.^{9/}

Continental, in its initial comments, argued that the FCC should allow flexibility in adopting certain provisions of its must-carry regime. But it did not argue that the FCC should take positions that are flatly contradicted by the plain words of the new Act. NAB and CBS, in contrast, ask the Commission to grant

^{7/} CBS Comments at 12-14.

^{8/} Sections 325(b)(3)(B) and 325(b)(4).

^{9/} Capital Cities/ABC Comments at 30-32.

broadcasters far more ground than they won in Congress. These attempts to overreach beyond the Act should be flatly rejected.

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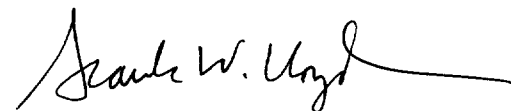
I, Frank W. Lloyd, hereby certify that a copy of the foregoing Reply Comments of Continental Cablevision, Inc. have been sent by United States mail, first class and postage prepaid, to the following on this 19th day of January, 1993:

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A handwritten signature in black ink, appearing to read "Frank W. Lloyd", written over a horizontal line.

Frank W. Lloyd